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## Appendix A

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### Analysis of Scoping Comments

#### ELM Placer Exploration Project

Three letters specific to the project were received during the scoping period of December 17, 2015 to January 29, 2016. The letters were analyzed and an analysis code assigned to the comments (see Table 1).

#### Comment Analysis Codes

- 1: Outside the scope of the proposed action.
- 2: Already decided by law, regulation, Forest Plan, or other higher level of decision.
- 3: Irrelevant to the decision to be made.
- 4: Conjectural and not supported by scientific evidence.
- 5: General comment, suggestion, opinion, or position statement.
- 6: Other agency or partner's consultation, review, advice, recommendation(s), etc.
- 7: Already considered in the proposed action or is standard procedure.
- 8: Will be included in an analysis of effects to the environment.

Codes 1 – 6 are standard codes. Comments assigned to these codes are considered to be non-significant issues. Code 7 was added as a category for those suggestions that are already proposed or for procedures that are routinely done. Code 8 was added as a category for suggestions that are included and will be analyzed for effects to the environment.

**Table 1: Comment Analysis**

Commenter	Comment	Disposition
Gary Mcfarlane Friends of the Clearwater	An EA, at a minimum, is required.	2
	The scoping letter gives no time frame for completion of this exploration. It can't be done with a CE unless it takes less than a year. The seven locations may easily take more than a year to complete. Please explain and provide evidence why this project will take place in less than a year's time.	Plan of Operations processed under 36 CFR 220.6(e)(8) are valid for one year.
	This would take place in the Cove Roadless Area (also called Gospel Hump by the Forest Service). Past mining activities have not turned up valuable deposits that have warranted mine development. The area has been recovering from 1980s-era exploration. The 222N road is closed to motorized use. An EA or EIS is needed to fully evaluate the impacts on the roadless area and the impacts from opening the 222N road.	2, 5, 8  FSR 222N is closed year round to motorized use; however, use of this road by the claimants/operators would be authorized through the approved Plan of Operation.
	The area is lynx habitat.	5, 8

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Commenter	Comment	Disposition
Gary Mcfarlane Friends of the Clearwater	Little Mallard Creek flows into the Salmon River, which is critical habitat for salmon, steelhead and bull trout.	5, 8
	The scoping letter says no water would be taken from streams but then notes a water use permit would be obtained before taking water from streams. This inconsistency must be clarified.	If the claimant needs to withdraw water from a watercourse, a Temporary Approval of Water Appropriation from the ID Dept. of Water Resources would be required, which includes protections for riparian vegetation and soil disturbance. The Plan of Operation would include criteria for water management as well.
	It should be emphasized that the agency's duties under the ESA are not overridden by any "rights" the applicants may have under the 1872 mining law. The courts are clear ... that prohibitions under the ESA must be enforced, even to deny mining operation, by requesting a new plan to meet the environmental concerns be submitted.	5, 8
	The issue of claim validity is important...because the reasonableness of the proposed action needs to be adequately considered for such a large proposal.	5
	How do nine sample locations and trenches fit in with [the requirement to] ... Keep it small, to the extent practicable, and build, if warranted, from there. In other words, minimize the amount of disturbance to surface resources in order to prevent unnecessary destruction of the area, and to ensure to the extent feasible that disturbance is commensurate with each level of development.	The project has been modified to limit sampling to within a 0.25 acre previously disturbed area.
	That simple principle is of paramount interest to the Forest Service that, by its Organic Act, is responsible ... "to regulate their occupancy and use to preserve the forest thereon from destruction." Equally important, the principle has been articulated by the 9th Circuit Court [which] articulated that mining is a sequential process composed on logical steps. Further, mining activity that would cause significant surface disturbance on [National Forest System] lands must be related to a logical step in that process and the steps must be in the proper sequence. [S]ignificant disturbance requires more than a simple CE.	2, 5, 7

Commenter	Comment	Disposition
Gary Mcfarlane Friends of the Clearwater	The question [is], “Has the claimant made the discovery of a “valuable mineral deposit” on this claim?” (30 U.S.C. 22.) A mining claim location does not give presumption of a discovery. “[L]ocation is the act or series of acts whereby the boundaries of the claim are marked, etc., but it confers no right in the absence of discovery, both being essential to a valid claim.” (Cole v. Ralph, 252 U.S. 286, 294-96 (1920)).	In order to make a discovery of a valuable mineral deposit, the operator has a statutory right under the 1872 Mining Law to enter National Forest System lands to conduct reasonable activities to prospect and explore for mineral resources in a way that minimizes adverse environmental impacts on National Forest System surface resources (36 CFR 228.1).
	Simply put, the scoping letter provides too little information. There is no location of the test trenches. Rather than leave that to a later date, an EA or EIS is needed to evaluate proposals.	The project meets all the criteria outlined in 36 CFR 220.6., therefore the use of a CE is appropriate.
	In essence, the Forest Service is proposing to approve the project prior to any analysis and leaving that to a “field review” to take place later.	5
	The automatic assumption this is something that can be approved with a CE fails to take a hard look at the crucial issue of whether this complies with the ESA,	7, 8
	the fact a 404 permits is needed,	All required permits, including a 404 permit, will be obtained before any excavation may begin.
	the fact it is located within the Cove roadless area,	Effects of the project on the Cove / Gospel Hump Roadless Area will be evaluated.
	and the length of time this project would take.	The duration of the operation would be one year or less.
Jonathan Oppenheimer, Idaho Conservation League	We are concerned about cumulative impacts and the use of the categorical exclusion set forth at 36 C.F.R. § 220.6(e)(8) (“Category 8). We believe that it is improper for you to approve this project using Category 8 and must at a minimum prepare an EA.	2, 5, 8
	[T]he agency cannot utilize Category 8... the Ninth Circuit has held, an agency’s decision to establish a category of actions that are excluded from full NEPA review can only be made with a full understanding of the significance of the impacts resulting from application of the category.	2, 5, 7, 8
	Not only must you consider the cumulative impacts of this project ... but you must also consider the impacts of all projects previously approved using Category 8 which may have any cumulative impacts.	Cumulative effects of the proposed activities will be evaluated. The scope of the cumulative effects analysis will be determined by the individual resource specialists.

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Jonathan Oppenheimer, Idaho Conservation League	<p>Furthermore, you must review any other past, present, or reasonably foreseeable impacts in your cumulative impacts analysis for these projects*, including but not limited to: road construction, timber management, minerals exploration and development, livestock management, travel management, wildfire, prescribed fire, or other activities.</p> <p>* ICL included a list of 23 mineral exploration and development projects within the Nez Perce-Clearwater NF. [See ICL ELM comment letter, p.4 for a list of the projects.]</p>	<p>Cumulative effects of the proposed activities will be evaluated. The scope of the cumulative effects analysis will be determined by the individual resource specialists.</p>
	<p>The Forest should provide more information on the proposed routes to access excavation sites. The scoping notice mentions the existence of road templates from previous activities, and trails that will be utilized throughout the project area. However, it is unclear whether and how trails will be established, the current status of existing road templates, whether they are authorized or unauthorized routes, whether they are part of the National Forest System Road Inventory, etc.</p>	<p>Access to the project area would be by Forest System Road 222, from the old Red River Ranger Station to FSR 222N, then down 222N to an existing dispersed campsite which would act as a staging area.</p> <p>FSR 222N is closed year round to motorized use; however, use of this road by the claimants/operators would be authorized through the approved Plan of Operations.</p> <p>An existing unauthorized ATV trail would be used for travel to and from the project area. The trail would be decompacted and revegetated when sampling was completed. No road construction or reconstruction would be required.</p>
	<p>We are deeply concerned about potential impacts to aquatic and terrestrial organisms. Impacts to wildlife need to be avoided, minimized and mitigated. Bull trout, Steelhead, and Chinook salmon which are each listed as threatened under the ESA, and Westslope cutthroat trout, a USFS sensitive species, may currently inhabit Little Mallard Creek and require high quality habitat. Based on the likely presence of these species, a full Biological Evaluation/Assessment is warranted. The area is also potential habitat for grizzly bear, gray wolf, pileated woodpecker, and peregrine falcon.</p>	<p>7, 8</p>

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Jonathan Oppenheimer, Idaho Conservation League	In addition, because activities are proposed in the Riparian Habitat Conservation Area (RHCA), a full Plan of Operations is required to be submitted consistent with Forest Plan Standards (PACFISH/INFISH).	7
	We are concerned that the increase in human activity...will displace wildlife species, or prevent them from using this area.	5, 8
	We recommend that the Forest Service limit operations to times of the day when wildlife are less sensitive to disturbance.	Activities would be expected to occur between the hours of 0600 in the morning to 2000 in the evening.
	We are also concerned about potential impacts to listed, candidate, or sensitive plant species. The Forest Service should thoroughly survey the project area for plants of concern, including Payson's milkvetch, during the appropriate times of year. Because the project is being scoped in late summer 2015, we are concerned that surveys may miss plants that would only be detectable during spring/early summer.	7, 8
	The operator must comply with all applicable federal and state water quality laws and regulations, including sections 303, 401, and 404 of the Clean Water Act.	7
	We strongly encourage the FS to require additional measures to protect Little Mallard Creek from sedimentation release generated from the excavation areas. Weed free straw bales or booms could serve this purpose where appropriate, however the likelihood of sediment delivery in association with this project should be considered by the hydrologist, and in the aquatics assessment for this project.	7, 8
	The operator will need to obtain a storm-water discharge permit to reduce erosion from the disturbed area. Further, because of the presence of wetlands (which were not disclosed in the scoping notice), additional permits and analyses are required.	7, 8

Commenter	Comment	Disposition
Jonathan Oppenheimer, Idaho Conservation League	<p>The effects of mining exploration activities on surface water and groundwater quantity and quality need to be determined for a full range of flow conditions. This geochemical analysis should include the following factors:</p> <ul style="list-style-type: none"> <li>• preexisting water quality issues from previous mining activities</li> <li>• sedimentation from roads and trails</li> <li>• transportation of hazardous or toxic materials near streams</li> <li>• on-site water needs</li> <li>• source of water</li> <li>• the depth and flow of water table</li> <li>• the potential for household chemicals and toxins to leach into surface and ground waters</li> <li>• water capture and subsequent leakage by trenches</li> <li>• waste water discharge from site</li> <li>• storm water runoff</li> </ul>	<ul style="list-style-type: none"> <li>• There are no known water quality issues due to previous mining activities within the drainage.</li> <li>• Sedimentation from roads and trails would be monitored and mitigated as stipulated in the approved Plan of Operation.</li> <li>• Fuel and oil would be the only toxic materials on site. A spill prevention plan would be in place, as per the Plan of Operation, before activities could begin.</li> <li>• Onsite water needs were addressed in the Scoping notice.</li> <li>• A detailed analysis of the depth and flow of the water table is beyond the scope of this project. A more detailed analysis would be conducted if full scale mining is proposed at a later time.</li> <li>• No household chemicals and/or toxins would be discharged onsite.</li> <li>• No water would be discharged from the open trenches or pits into the surrounding area. If required, excess water may be applied to upland areas. This would apply to excess storm water runoff as well.</li> </ul>
	<p>The claim operator would likely to divert water from an unnamed tributary stream for exploration activities. The Forest Service should work with the operator to increase the water use efficiency and water recycling. The operator needs to obtain water permits for all uses.</p>	7
	<p>The scoping notice does not include whether the claimants will be required to submit a Plan of Operations. Given the placement within a RHCA in the Gospel Hump Roadless Area and proximity to ESA habitat, the FS should require a PoO and reclamation bond, consistent with Forest Plan Standards.</p>	7

Commenter	Comment	Disposition
Jonathan Oppenheimer, Idaho Conservation League	<p>Disturbed soil and waste rock piles need to be reseeded with native plants, and weeded to prevent expansion of noxious weeds. Furthermore, the agencies should monitor the areas subjected to replanting for three years to ensure vegetation success.</p>	<p>No waste rock piles would remain upon project completion. All disturbed areas would be seeded with native species or by transplanting “plugs” of existing species, or a combination of both.</p> <p>The project site would be monitored until such a time as revegetation has reached a satisfactory level.</p> <p>The project area would be monitored for noxious weeds and if found, appropriate measures taken for removal/control.</p>
	<p>All garbage must be disposed of appropriately in a timely fashion to minimize interactions with wildlife. We appreciate that a portable toilet is being required. The Forest Service should conduct random site visits to make sure these requirements are being met.</p>	7
	<p>The proposal does not describe whether the operator will use a generator or not. If a generator is allowed, decibels should be regulated, fuel adequately contained with secondary containment systems, and generators should be turned off at sunset to minimize noise levels and light levels according to Dark Sky principles.</p>	<p>The operator would be required to adhere to the same standards as all other forest users regarding the use of generators, sound levels, etc. There are no restrictions on operating generators or other equipment beyond sunset on the Forest, and it would be arbitrary to restrict mining claimants in a manner that other forest users are not restricted.</p> <p>A fuel spill prevention plan would be required as a condition of the Plan of Operation approval.</p>
	<p>The Forest Service should include a calculation of the amount of reclamation bond that will be required for equipment removal and road decommissioning. In addition, strict time limits need to be set at which point the bond will be forfeited if reclamation is not complete. We are particularly concerned if there is a suspension of operations for several years, during which time significant resource damage could occur in terms of sedimentation.</p>	7

Commenter	Comment	Disposition
Jonathan Oppenheimer, Idaho Conservation League	We are concerned about the noise from drilling operations on wildlife, and recreationists in the area. The Forest Service needs to describe the volume (decibels) and regularity of noise from drilling and transportation activities and analyze how visitors and wildlife will be affected. We suggest that water pumping and drilling should be limited to daylight hours to reduce impacts on recreationists and wildlife.	No drilling would be conducted during this operation. Activities include trenching or digging of test pits with an excavator or backhoe. Noise levels would be equal to that of any other mechanized earth-moving equipment that normally operates on the Forest. Activities would be expected to occur between the hours of 0600 in the morning to 2000 in the evening.
	We are concerned about visual effects for recreationists and wildlife in the area. Negative effects include exhaust, smoke, and dust during the day and lights at night. While visual effects could be temporary to short-term until reclamation begins, we are concerned that in some places some of the visual effects will occur as a result of the removal of medium and large-sized trees.	Effects from exhaust, smoke, and/or dust to wildlife and/or recreationists would be minimal. Both would avoid the area during operations and the exhaust, smoke, etc. would quickly disperse. Activities are expected to occur mostly during daylight hours, therefore the only after dark lighting would be at the camp. No trees are expected to be removed as a result of this proposal.
	During the fire season, the operator must comply with all regulations to avoid and to curtail fire starts. Fire extinguishers should be inspected regularly ... and located in all vehicles. Each vehicle should be required to contain a Pulaski axe, fire rake, McLeod fire tool, fire flag, and shovel. Handheld implements (shovels or axes) should be accessible at all operating locations.  In the event of a wildfire, protection of the operator's equipment should be the responsibility of the operator and a point protection plan with appropriate fire suppression equipment should be detailed. We also recommend developing an evacuation plan and identify potential safe zones in the event of a wildfire.	Mining claimants and operators would be required to adhere to the same fire prevention/protection standards as all other forest users and equipment operators. As such, they would have all needed fire prevention equipment on site.
	The Forest Service must also analyze and disclose the direct and indirect cumulative effects of this project in conjunction with all past, present and reasonably foreseeable future actions, including additional mineral exploration projects in the area. We are concerned about the potential downstream impacts this exploration project may have on the watershed and wildlife.	7, 8
Bernie Hermann Lewis-Clark ATV Club Inc.	The Lewis-Clark ATV Club Inc. supports the project.	Thank you for your comment.